

J. H. asks the Utah Labor Commission to reconsider its prior decision denying a portion of Mr. H.'s claim for temporary total disability compensation under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Annotated.).

The Labor Commission exercises jurisdiction over this matter pursuant to Utah Code Annotated §63-46b-13.

### **BACKGROUND AND ISSUES PRESENTED**

Mr. H. seeks temporary total disability compensation from December 18, 2001, until May 27, 2002, for "thoracic outlet syndrome" caused by his work at Consolidated Freightways. In its previous decision, dated February 28, 2006, the Commission concluded that Mr. H. was not temporarily totally disabled after December 18, 2001, because as of that date he was able to perform his regular work duties.

Mr. H. now asks the Commission to reconsider its decision on the grounds that Consolidated did not offer light duty work to Mr. H..

### **DISCUSSION**

As the Commission understands Mr. H.'s request for reconsideration, he agrees that, as of December 18, 2001, he was able to perform his regular pre-injury work duties. Utah's appellate courts have held that an individual is temporarily totally disabled "if he can **no longer** perform the duties of the character required in his occupation prior to his injury." *Entwistle v. Wilkins*, 626 P. 2d 495, 498 (Utah 1981)(emphasis added). Because Mr. H. was able to perform his regular work duties after December 18, 2001, he cannot be considered temporarily totally disabled after that date. This is true even if Mr. H. was not fully healed from his work injury. Furthermore, since Mr. H. was not temporarily totally disabled, the question of whether Consolidated actually offered him light duty work is immaterial.

### **ORDER**

The Commission denies Mr. H.'s request for reconsideration and reaffirms its previous decision in this matter. It is so ordered.

Dated this 28<sup>th</sup> day of April, 2006.

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R. Lee Ellertson  
Utah Labor Commissioner